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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/659,861	09/11/2003	Jim Azzar	HOL01 P-102	5077

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EXAMINER

LHYMN, EUGENE

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No. 10/659,861	Applicant(s) AZZAR, JIM	
	Examiner Eugene Lhymn	Art Unit 3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 January 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some * c) ☐ None of:
 - 1. ☐ Certified copies of the priority documents have been received.
 - 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
 Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
 Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-5, 11-15, 18-20, 22-25 are rejected under 35 U.S.C. 102(b) as being anticipated by Walker (US 5781374). With respect to claims 1, 11, 13, 18, 19, Walker discloses the following:

- A tray having a base wall, sidewalls, cavity (Fig. 3, item 14)
- A preformed flexible liner, conforming to the inner surfaces of the tray, and contacting said surfaces (Fig. 3, item 30)

With respect to claims 2, 12, Walker discloses the sidewalls forming a contiguous sidewall (Fig. 2, item 16).

With respect to claim 3, Walker discloses the limitations as set forth in claim 1 above, in addition to the liner being made of paper (Col. 4, Lines 45-50).

With respect to claim 5, Walker discloses the tray being plastic (Col. 4, Lines 35-38).

With respect to claims 14, 25, 23, Walker discloses the liner being paper (Col. 4, Lines 45-50).

With respect to claims 6, 15, 20, 24, Walker discloses the base wall of the tray being circular (Fig. 2, item 16).

With respect to claim 22, Walker discloses the limitations as set forth in claim 1 above, in addition to the liner having a planar base wall with an upstanding perimeter wall (Fig. 4, item 48).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 4, 7, 16, are rejected under 35 U.S.C. 103(a) as being obvious over Walker. With respect to claim 4, Walker discloses the liner being made of a flexible paper board liner, wherein in Col. 4, lines 45-50, Walker discloses the liner being made of a paper material, and that any suitable paper material can be used, therefore it would have been obvious to one of ordinary skill in the art at the time of the invention to configure the material to be paper board liner.

With respect to claims 7, 16, Walker discloses the claimed invention except for the base wall of the tray being rectangular. However, Walker teaches that the shape of the base can vary, as shown in Fig.'s 2 & 3. Moreover, a change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Therefore, it would

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have been obvious to one of ordinary skill in the art at the time of the invention to modify the shape of the tray base wall of Walker to be rectangular in order to provide a change in shape.

5. Claims 8-10, 17, 21 are rejected under 35 U.S.C. 103(a) as being unpatentable over Walker in view of Ross Jr. (US 6639199 B1). With respect to claims 8-10, 17, 21, Walker discloses the claimed invention except for the liner including indicia. However, Ross Jr. teaches a food-holding container having indicia so as to provide an emblem to provide aesthetic value to the container. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the invention to add indicia to the liner of Walker as taught by Ross Jr. so as to provide aesthetic value to the container.

Response to Arguments

6. Applicant's arguments with respect to all claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. See PTO-892 for all relevant and referenced prior art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eugene Lhymn whose telephone number is 571-272-8712. The examiner can normally be reached on MTWT 6-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on (571)272-4544. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen K. Cronin
Primary Examiner